

**COURT PREPARATION
PARTICIPANT'S GUIDE**

*The information provided in this guide may assist
you when you go to court. If you have any questions
or need further assistance, please contact the
Victims' Services office nearest you.*

**REGIONAL VICTIMS' SERVICES PROGRAM
VICTIMS' SERVICES DIVISION
NOVA SCOTIA DEPARTMENT OF JUSTICE**

A VICTIM'S GUIDE TO THE COURT PROCESS

WHO ARE WE?

The Regional Victims' Services Program is a service of the Victims' Services Division of the Nova Scotia Department of Justice. A list of our offices and toll-free numbers is provided at the back of this booklet.

WHY ARE WE HERE?

Court Preparation is designed to give each of you information about what happens when you go to Court and what you can expect. We are here to help you understand some of what is going on and why it happens that way.

WHAT WILL WE BE DOING?

The information session will take approximately 90 minutes and it will be divided up in six sections with some time available for questions and answers, at the end of each section.

We will be talking about the general process that occurs in court.

Because it is important to protect each person's confidentiality and in order not to contaminate or influence any evidence that you may give in court, ***we cannot talk about the details of your case or information that may be presented as evidence.***

We will not be using your name, and we will not discuss the actual crime that has occurred.

If you have questions about your particular case, we ask that you contact us at our office and we can discuss your questions then.

WHERE YOU ARE IN THE PROCESS

There are various levels of courts and different kinds of court hearings. Some of you may be at different points in the court process.

CRIMINAL COURT

The Provincial, Youth and Supreme Courts deal with Criminal Code offenses. Criminal Court is different from Family Court, which deals with family issues such as custody and maintenance, and Civil Court, which deals with law suits between individuals.

ARRAIGNMENT

This is the first appearance of the accused when she/he is formally charged with the offence.

PLEA

The answer the accused gives (guilty or not guilty) to the charge. You may be going to a **Preliminary Hearing**. A preliminary hearing is when the Crown Attorney presents the case to the Judge, who determines whether there is enough evidence to send the matter to a Supreme Court trial.

CROWN ATTORNEY

The lawyer who represents society during a criminal trial. The Crown Attorney is **not** the victim's lawyer. The role of the Crown is to present **all** the evidence to the court so the Judge or jury can make a decision about whether or not the accused should be found guilty. The Crown's job is to ensure the court gets the facts, not necessarily to get a conviction.

You may be going to a **Trial**. A trial is a formal hearing, held before a Judge alone or a Judge and jury, to determine if the accused person is guilty of the offence.

Whether you are going to Provincial Court, Youth Court or Supreme Court, the layout of the courtroom and the process that the court will follow are quite similar.

Provincial Court deals with preliminary hearings and many criminal trials.

Youth Court deals with criminal cases involving youths aged 12 to 17 at the time of the offence. Members of the public are permitted to attend Youth Court hearings, unless they are specifically excluded by the Judge.

Supreme Court is a higher court. This court hears criminal cases before a Judge alone or a Judge and jury.

THE OTHER PLAYERS IN THE PROCESS

JUDGE

At the trial there will always be a Judge. The Judge is the person with the authority to hear evidence and decide cases in Court. She/he always wears a robe while in Court.

JURY

Sometimes there may be a jury as well. It is the job of the jury to listen to evidence at a trial and to decide whether an accused is guilty or not guilty, based on the facts presented during the trial.

COURT CLERK

The Court Clerk makes sure everything necessary for the trial is in place. The Court Clerk reads the charge and gives the oath to the witnesses before they testify.

COURT REPORTER - (Supreme and Provincial Courts)

A Court Reporter will ensure that everything said during the trial is recorded.

SHERIFF

A Sheriff may be present to call witnesses to the stand when it is their turn to testify. The Sheriff also has the responsibility for the security of the courtroom.

CROWN ATTORNEY

The Crown Attorney is the lawyer for the Crown (or the state). She/he makes certain that all the facts of the case are presented to the court. If it is Supreme Court, the Crown Attorney will be wearing a robe.

DEFENDANT OR ACCUSED

The defendant (or accused) will be in the courtroom.

DEFENCE ATTORNEY

The Defence Attorney is the lawyer for the person accused of the offence.

WITNESS

A witness is a person who testifies in court because she/he has some information about the case. Victims of a crime are witnesses in the court process and may also be referred to as the complainant. Witnesses receive a **subpoena**. This is a piece of paper that is given to them that tells them when and where to attend court. A subpoena must not be ignored. If you ignore it, an arrest warrant may be made against you.

COURT

Court is a public place. Members of the public may be present. In Canada, all trials are open to the public unless the court has ordered otherwise (ie: an exclusion order).

There are also situations where the Judge may ask the public and the jury to leave the court room. A **voir dire** is an example. If either the Defence or the Crown objects to admitting certain information, the Judge will hold a voir dire. This is a trial within a trial to decide whether the information should be allowed as evidence.

Members of the public may sit quietly in the seats behind the rail which divides the public section from the court section.

It is considered disrespectful to whisper or to talk. People who cause a disturbance may be asked to leave.

Do not leave or enter the courtroom while a witness is testifying.



PREPARING TO GO TO COURT

SUBPOENA

A court order that tells a witness when and where to come to court. It is against the law to ignore a subpoena.

As a witness, you may be in court for several hours or more. Take this into consideration when arranging for baby sitting or transportation to and from court.

Be sure you know where the Courthouse is before the actual court date (please refer to the map and directions which are available at the Victims' Services Offices).

The accused or witnesses (or family or friends) for the **Defence** may also be in the waiting area. If you are uncomfortable or feel unsafe, speak to the Crown Attorney or the Sheriff, or call the Victims' Services office before your court date and we will try to make arrangements for you to wait in a separate area.

If you wish, you may take someone with you (friend, advocate, or family member).

Dress appropriately, by wearing clean and comfortable clothes.

Eat before you go to court. Bring snack food with you if you wish (only for while you are waiting; you cannot eat in the courtroom).

Bring something to read if you wish. If a child is waiting for court you may wish to bring games, etc. to entertain them during the wait.

WHEN YOU ARRIVE AT COURT

Be sure to allow enough time to get to the court and get comfortable before the session begins.

As a witness to the case, you should not hear the **testimony** of witnesses who take the stand before you as this may affect your testimony. Usually, the Judge will make an **exclusion order** for witnesses and you will have to remain outside the courtroom until it is your turn to testify.

The Crown Attorney may wish to speak with you before court begins. Check your subpoena for special instructions. Otherwise, we recommend that you arrive approximately 30 minutes before the session begins.

If you are contacted by the **Defence Attorney** (the lawyer for the accused), it is your choice whether or not you wish to speak to him or her.

In sexual assault cases, if you do not want your name and/or address revealed in court, or if you do not wish your name published in the media, you should tell the Crown Attorney before the trial begins so she/he can request a publication ban.

THE GENERAL COURT PROCESS

Court opens when the Court Clerk (or Sheriff) calls the court to session and announces the name of the Judge. Everyone in the court must stand as the Judge enters and remain standing until the Judge sits.

The Judge usually asks that any witnesses for the case leave the court room and wait outside. Even if the Judge does not ask, you should leave the court room if you are to testify in the case, as witnesses are not permitted to hear another witness' evidence.

If the Judge determines that there is any reason why the trial should not occur at this time, there may be **an adjournment** which would temporarily stop the hearing until another time or another day.

The Crown Attorney's case is presented first. All witnesses for the Crown will be called to give testimony and the Crown Attorney will be the first to ask each witness questions.

Burden of Proof: A person is assumed to be innocent until proven guilty. Guilt must be proven beyond a reasonable doubt. It is not up to the accused to prove innocence.

After the Crown Attorney asks each witness her/his questions, the Defence lawyer can ask the same witness questions. It is the job of the Defence lawyer to point out if there are any mistakes in the story of a witness, or if the information is remembered correctly, or if there are any gaps in the information.

Disclosure: The Crown Attorney must give all information gathered in the investigation to the Defence lawyer. This is done to allow the accused to fully defend him/herself against the charge(s).

The Crown cannot force the accused to testify. It is the choice of the accused and her/his lawyer to decide if this will happen.

The Defence's case *may* be presented after the Crown evidence has all been presented.

The Defence is not required to present any evidence on behalf of the accused, but may call their own witnesses.

IN A PRELIMINARY INQUIRY, THE DEFENCE DOES NOT HAVE TO PRESENT A CASE.

As we stated earlier, *guilt must be proven beyond a reasonable doubt. The accused is not required to prove her/his innocence; therefore, if the Defence feels that the Crown has not proven guilt, the Defence may choose not to call any witnesses.*

Any witness called by the Defence may be ***cross-examined*** by the Crown Attorney.

CLOSING ARGUMENTS ARE GIVEN BY BOTH THE CROWN AND THE DEFENCE.

TRIAL BY JUDGE AND JURY

A trial by Judge and jury follows a similar process to trial by Judge alone. The main difference is that the Judge's task is to decide issues of law and to leave issues of fact to the jury.

Before the Crown Attorney presents the evidence, there may be a lengthy period of jury selection. During the trial, the jury is present in court except during voir dire hearings.

TRIAL PROCEDURE

Before presenting evidence, the Crown Attorney may make an opening speech to the jury, explaining what the Crown intends to prove and the evidence witnesses will give.

The trial then proceeds in the same way as a trial before a Judge sitting alone. Following the case of the Defence, both parties will have the opportunity to make closing statements to the jury.

The Judge will then make the charge to the jury. The jury decides whether, on the evidence presented in court, the charges against the accused have been proven beyond a reasonable doubt. Depending on the jury's verdict, the Judge will either acquit the accused or pass sentence.

JURY SELECTION

Nova Scotia is divided into 18 jury districts from which jurors are selected. To qualify to be selected as a juror, a person must be a Canadian citizen, be 18 years of age or older and have resided for at least 12 months in the jury district.

Each jury district has a jury committee which annually makes a random selection of persons who may be called to do jury duty. For the Halifax District, the jury committee selects 1200 names and for all other districts, 300 names.

When a jury is required, a Judge will make a random selection from the jury list for that district. The people selected will be notified to come to the court on a specific date and time for jury selection. The number will far exceed those which will eventually be called upon to serve on the jury.

In criminal trials, the jury is comprised of 12 persons selected in accordance with the provisions of the Criminal Code. The panel of jurors is comprised of many more than 12 persons because both the Defence and the Crown Attorney have a right to challenge the selection of a juror.

A person accused of first degree murder or treason can challenge 20 jurors without giving a reason. A person charged with an offence carrying a penalty of five years or more of imprisonment can challenge 12 jurors without giving a reason. Persons accused of all other offenses may challenge 4 jurors without giving a reason.

Both the Crown Attorney and Defence have the right to challenge jurors. A juror may be challenged for various reasons. For example, if a juror appears to be biased, or admits that she/he is unable to give the accused a fair hearing, or is not eligible because she/he is not a Canadian citizen.

During the trial, a juror may be discharged at the discretion of the Judge; however, the trial can continue with a reduced number of jurors, provided the number does not fall below ten.

THE JURY VERDICT

In a jury trial, all jurors must agree on the verdict. A jury may reach a unanimous decision within hours, or it may take much longer. If a unanimous decision cannot be reached among all the jurors, this is considered to be a hung jury. The result of a hung jury is usually a new trial with a new jury.

WHEN YOU ARE CALLED AS A WITNESS

The Sheriff will come and get you from the waiting area and bring you into the courtroom.

You will walk to the front of the courtroom and up to the witness stand.

The Court Clerk will ask you to take an ***oath***, which is a legal promise to tell the truth by swearing on the Bible or another religious document (ie., the Koran). The wording of the oath is as follows ... ***"I do solemnly swear that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth"***. A person who does not want to swear on the Bible, makes a solemn ***affirmation*** to tell the truth. The wording of the affirmation is as follows ... ***"I do solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth"***. You do not have to repeat the oath/affirmation, you simply respond by saying ***"I Do"***.

WHEN YOU ARE ON THE STAND

Speak clearly and loudly so you will be heard by the Judge and both Attorneys.

The microphone does not make your voice louder—it only records what you are saying for the Court Reporter. Unless asked to do so, you do not have to look at the accused. It may help to pick a particular spot in the courtroom on which you can focus.

You must answer all questions unless one of the lawyers raises an ***objection***. If this happens, wait until you are told to answer the question.

The Judge may also ask a question. Whenever you address a Judge, you may refer to her/him as ***"Your Honour"***. In Supreme Court she/he may also be referred to as ***"My Lord or My Lady"***.

Do not nod or shake your head for a ***"yes"*** or ***"no"*** answer. You must speak out loud so your answer can be heard and recorded.

If you are finding the questions difficult, it may help to take a deep breath before speaking. Don't feel as if you have to rush your answers.

Listen carefully to all the questions.

If you do not hear or understand the question, say so.

If you don't know the answer to a question, say you don't know. Don't guess.

You can ask for a kleenex or a glass of water.

AFTER YOU TESTIFY

After you have testified, the Judge will tell you when you may leave the witness stand and take a seat in the public section of the court. If you are to be called back to testify again later in the trial, you may be asked to leave the courtroom. You are discouraged from returning to the waiting area where other witnesses are waiting to testify as you are not permitted to discuss your testimony with other witnesses. ***It is also very important not to discuss your evidence with people other than the Crown Attorney before the trial as the Defence may suggest that your evidence was influenced by what someone said to you.***

The process of hearing witnesses may take several hours or even days. If you do not want to stay or are unable to stay until the case is completed, but you want to know the result of the trial, you can contact the Victims' Services Office and we will get the information for you. You may also get this information if you are in contact with the Investigating Officer or the Crown Attorney.

If there is a need for a court transcript, you should contact the Victims' Services Office for further information.

Witness Fees: Witness fees are set amounts. You should ask the Crown Attorney for this information. You may also be able to claim for other direct expenses such as meals, travel expenses and child care costs by submitting receipts to the Crown Attorney. For further information or assistance on this matter contact the Victims' Services Office.

VERDICT AND SENTENCING

The **verdict** is the decision of the court, finding the accused either guilty or not guilty. If the accused is found not guilty (this decision is also known as an **acquittal**) this means the court is not satisfied **beyond a reasonable doubt** of the accused's guilt.

To understand a not guilty decision, it may be helpful to think of the trial as a jigsaw puzzle that the Judge or jury must put together. If the Judge or jury do not see all the pieces of the puzzle or cannot make all the pieces fit together they are unable to get a clear picture of what happened and the Judge or jury will find the accused not guilty.

If the accused pleads, or is found guilty (also known as a **conviction**), the Judge may decide on a sentence right away or may set a separate time to decide on the sentence. This is called a **sentencing hearing**. The Judge may ask that a pre-sentence report be completed on the offender by a probation officer. This report outlines the background and circumstances of the offender and is submitted to the court for the Judge's consideration in sentencing.

At sentencing the victim of the crime may wish to submit a **Victim Impact Statement**. This is a written statement which describes the harm or loss the victim suffered as a result of the crime. The court may consider the Victim Impact Statement in determining an appropriate sentence. If you wish to submit a Victim Impact Statement, you should contact the Victims' Services Office for assistance with this process.

Sentences can range from: an **absolute discharge** where the accused is set free with no criminal record; to a **suspended sentence with a period of probation**; to a **fine**—a payment of money to the court; or a **prison term**—the length can vary from days to years. Other options include **conditional discharge**; **prison term and probation**; **fine and probation**; etc.

POSSIBILITY OF APPEAL

Either the Crown or the Defence may **appeal** the decision of the court to a superior court, but there are special rules and conditions which determine if this can be done. If an appeal is granted, the court will have to decide if the offender is to be released or held in custody until the appeal hearing date. It is very unusual for witnesses to be called to testify at an appeal hearing.

RETURN OF EVIDENCE

Evidence used in trials, such as clothing or jewellery, is usually kept by the court for 30 days after the trial. It can then be released to the police who will return it to you. If there is an appeal, evidence will be held until 30 days after the appeal has been concluded. In some instances, the evidence can be photographed for use in the trial and returned to you before the trial.

RESTITUTION

The Judge may order the offender to pay restitution for damages as part of a probation order. The money will be paid to the court by the offender. The court will then issue a cheque to the victim with a cash statement indicating the offender's name. If restitution is ordered for you by the court, it is important that the court has a current address so that they can contact you. If you would like assistance with this, please contact the Victims' Services office.

CRIMINAL INJURIES COUNSELLING PROGRAM

The Criminal Injuries Counselling Program provides payment of professional counselling services for eligible victims of violent crime. The crime must have occurred in Nova Scotia and in most cases applications must be received within one year of the crime. The goal of the program is to help victims deal with trauma resulting from the crime. Counselling is provided by private counselling practitioners within the community who are approved counsellors with the program.

WORD LIST

Accused:	A person who is charged with a crime. The person is presumed innocent until proven guilty in a fair and public hearing.
Acquittal:	A judgement by the court that the accused is not guilty of the charge, or a finding of the court that the evidence presented does not prove beyond a reasonable doubt that the accused is guilty of the charge.
Adjourn:	Delay a hearing until a later time or date.
Affirmation:	A solemn and legally binding promise made by the witness to tell the truth in court.
Allegation:	Something that someone says has happened.
Appeal:	When a higher court is asked to review a lower court decision. The results of an appeal could be: (a) to agree with the lower court, (b) to order a new trial, (c) to increase or decrease the sentence, or (d) to acquit the accused
Arraignment:	This is the first appearance of the accused when she/he is formally charged with the offence.
Burden of Proof:	A person is assumed to be innocent until proven guilty. Guilt must be proven <u>beyond a reasonable doubt</u> . It is not up to the accused to prove innocence.
Charge:	The law that the police say has been broken.
Civil Court:	Where private individuals sue each other if they feel they have been wronged.
Complaint:	A statement to the police accusing someone of breaking the law.

Cross-examine:	Questioning of a witness by the lawyer for the other side.
Crown Attorney:	The lawyer who represents society during a criminal trial. The Crown Attorney is <u>not</u> the victim's lawyer. The role of the Crown is to present <u>all</u> of the evidence so that the Judge or jury can make a decision about whether or not the accused is innocent or guilty.
Criminal Court:	The court where Criminal Code offenses are dealt with.
Criminal Injuries Counselling:	The Criminal Injuries Counselling Program pays for professional counselling services for eligible victims of violent crime to help victims deal with trauma resulting from the crime.
Defence Counsel:	The lawyer who represents the accused.
Defendant:	The person accused of the criminal offence.
Disclosure:	Crown Attorneys must give all relevant information gathered in the investigation to the defence lawyer. This is done to allow the accused to fully defend herself/himself against the charge(s).
Election:	When the accused chooses to be tried by Judge and jury; by only a Judge; or a Provincial Court Judge.
Evidence:	What a witness says in court and things (such as photographs, clothes or drawings) that are brought to court to show what happened.
Hybrid Offence:	An offence that can be treated as a summary offence or an indictable offence. The Crown decides how it is to be treated.
Indictable Offence:	A serious criminal offence which can result in a penalty of imprisonment in a federal jail. Sentences range from two years to life depending on the offence.

Interview:	A meeting with the police or the Crown Attorney.
Juror:	A person who is on the jury.
Justice of the Peace:	A person in the community who has some of the powers of a Judge.
Objection:	When a lawyer disagrees with the type of questions and answers being discussed. If the Judge says "objection sustained", then she/he agrees with the objecting lawyer and the question/answer must stop. If the Judge says "objection overruled", then she/he disagrees with the objecting lawyer and the question/answer can continue.
Oath:	A legally binding promise, whether based on religious beliefs or not, by which a person signifies that she/he is bound to tell the truth.
Perjury:	To tell a lie in Court after having sworn to tell the truth. The punishment for perjury can be up to 14 years in prison.
Plea:	The answer the accused gives (guilty or not guilty) to the charge. The Judge asks the accused if she/he is ready to enter a plea. The accused can: (a) plead guilty, (b) plead not guilty, or (c) ask for an adjournment to get a lawyer. If the accused pleads guilty, she/he can be sentenced right away or a date will be set for sentencing. If the accused pleads not guilty, a trial/preliminary hearing date is set.
Preliminary Hearing:	A hearing in Provincial Court where the Crown Attorney presents the case and the Judge decides whether there is enough evidence to hold a Supreme Court trial. An accused charged with an indictable offence has the right to decide if she/he wants a preliminary hearing.

Presentence Report:	A report completed by a probation officer. It is a description of the accused's family life and personal situation and it is used by the Judge when considering the sentence.
Publication Ban:	An order by a Judge, usually in sexual assault cases, at the beginning of a hearing which prevents the media from using identifying information (such as the victim's name) when reporting about a court case. If you would like to apply for a publication ban in your case, you should discuss this with the Crown Attorney.
Sentence:	The punishment the judge gives to someone found guilty of breaking the law.
Sentence Hearing:	A hearing held after the accused has been found guilty of a crime. The Judge hears evidence to decide on an appropriate punishment. The Victim Impact Statement may also be considered at the hearing.
Subpoena:	A court order that tells a witness when and where to come to court. It is a criminal offence to ignore a subpoena.
Summary Offence:	A criminal act where, unless otherwise stated in the law, the penalty is a fine of \$2,000 or less or a maximum sentence of imprisonment for 18 months, or both.
Testimony:	Statements made in court by a witness who has taken an oath.
Transcript:	A written copy made by the court reporter of what is said in court.
Trial:	A hearing where the court makes a decision about the guilt of the person accused of the crime.

Verdict:	The decision of a Judge or a jury as to the guilt or innocence of the accused.
Victim Impact Statement:	A written description by a victim of the harm or loss she/he suffered as a result of the offence. A Victim Impact Statement is used by the Judge in determining an appropriate sentence for the offender.
Youth Court:	A court which deals with cases involving young persons between the ages of 12-17 years of age, who are accused of a crime. Names of young accused persons are not made public.
Witness:	Someone who is sworn to testify in court as to what she/he saw or perceived.

MORE ABOUT VICTIMS' SERVICES

The Regional Victims' Services Program has four offices to provide services to victims of crime throughout the province. The offices are located in Dartmouth, Kentville, New Glasgow and Sydney.

This is a no-cost service. Each office outside the Halifax area has a toll-free 1-800 number to ensure that victims can call our office free of charge no matter where they live in the province.

Our offices are staffed by Victims' Services Officers who can provide support and assistance to victims of crime from the time that the crime occurs through to the completion of the court proceedings or until a sentence imposed as a result of the crime is completed.

For service or information, please contact the **Victims' Services** office **serving the area** where the crime occurred.

For service in **Halifax Regional Municipality** contact:

Victims' Services Division—**Dartmouth** Office
Telephone: 424-3307

For service in **Annapolis, Hants, Kings, Lunenburg, Digby, Queens, Shelburne** and **Yarmouth** Counties contact:

Victims' Services Division—**Kentville** Office
Telephone: 679-6201 or Toll Free 1-800-565-1805

For service in **Antigonish, Colchester, Cumberland, Guysborough** and **Pictou** Counties contact:

Victims' Services Division—**New Glasgow** Office
Telephone: 755-7110 or Toll Free 1-800-565-7912

For service in **Cape Breton, Inverness, Richmond** and **Victoria** Counties contact:

Victims' Services Division—**Sydney** Office
Telephone: 563-3655 or Toll Free 1-800-565-0071



